



January 5, 2000

Ms. Linda R. Frank  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004

OR2000-0042

Dear Ms. Frank:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130869.

The City of Arlington (the “city”) received a request for information concerning cellular phones issued to city officials and employees. You argue that the cell phone numbers are not public information under the Public Information Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you assert that the cellular phone numbers themselves are not subject to the Public Information Act. Section 552.002 of the Government Code provides that “public information” means information that is collected or maintained by a governmental body in connection with the transaction of official business. The information here is maintained by the city in connection with the transaction of official business. Further, there is a legitimate public interest in the expenditure of public funds. *See* Gov’t Code § 552.022(a)(3); Open Records Decision Nos. 541 at 1-2 (1990), 520 at 5 (1989), 518 at 7 (1989), 233 at 2 (1980). Similarly, there is a legitimate public interest in how public officials conduct official business. Open Records Decision Nos. 518 at 4 (1989), 506 at 4 (1988). Thus, the cellular phone numbers are public information that is subject to public disclosure under the Public Information Act. *See City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 553-54 (Tex. App.--Dallas 1998, pet. granted). We will now address whether any of the exceptions from disclosure you have claimed are applicable to the information submitted to our office.

First, you claim that the cell phone numbers and account numbers are confidential pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 also encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to Gov’t Code § 552.101). This office has previously determined that phone numbers are not considered intimate and embarrassing information which would be protected under common-law privacy. *See, e.g.*, Open Records Decision No. 506 (1988) (cellular phone numbers of county-issued phones used for public business generally not excepted from disclosure). Furthermore, you have not specifically identified a constitutional provision, statute, or judicial decision which makes the information confidential by law. Accordingly, we conclude that the cellular phone numbers and account numbers may not be withheld under section 552.101.

Next, you assert that “any cell phone numbers or other phone numbers used in law enforcement for law enforcement purposes” are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release would interfere with law enforcement or prosecution.” Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In Open Records Decision No. 506 (1988), this office concluded that the cellular phone numbers for individuals with specific law enforcement responsibilities may be withheld under section 552.108. Therefore, you may withhold the cellular phone numbers of persons with specific law enforcement responsibilities. You additionally seek to withhold the phone numbers called by the city’s chief of police and a former peace officer under section 552.108. You indicate that “some of the numbers are used in the detection, investigation and prosecution of crime.” You

further state that the release of the cellular phone numbers of law enforcement officers would “put[] the holder of the phone number...called at risk of discovery when working undercover,” and “some numbers would identify witnesses....” After reviewing your arguments, we conclude that releasing the cellular phone numbers which are used in the detection, investigation and prosecution of crime would unduly interfere with law enforcement. Open Records Decision Nos. 636 (1995), 506 (1988). Therefore, the city may withhold such phone numbers from disclosure under section 552.108(b)(1).

Next, you assert that the home phone numbers of certain city personnel are excepted from disclosure under section 552.117 of the Government Code. Additionally, you claim that other phone numbers which reveal whether the officer or employee has family members are likewise excepted from disclosure by section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses, telephone numbers, and social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. The city may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). If a current or former city official or employee made an election under section 552.024 prior to the city’s receipt of the request for information, the city must not release the individual’s home phone number or other numbers indicating the existence of family members. Similarly, section 552.117(2) excepts from public disclosure information that reveals a peace officer’s home address, home telephone number, social security number, and whether the officer has family members. “Peace officer” is defined by article 2.12 of the Code of Criminal Procedure. The city must withhold the home telephone numbers and family information of its officers under section 552.117(2) regardless of whether those officers elected under section 552.024 to have this information withheld. The city must also withhold an officer’s *former* telephone number from disclosure. See Open Records Decision No. 622 (1994).

Finally, in your letter dated November 5, 1999, you claim that some of the information is confidential “because there is a personal right of privacy in someone outside the city.” You provide no argument to support this assertion. In your subsequent letter, dated November 12, 1999, you indicate that the only information redacted pursuant to a personal right of privacy was the phone numbers of city personnel who have elected to keep this information confidential pursuant to section 552.117 of the Government Code. As we have already discussed withholding certain information under section 552.117, we need not further address your additional claim.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

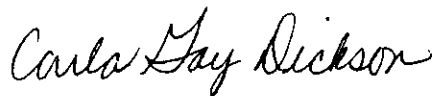
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ch

Ref: ID# 130869

Encl. Submitted documents

cc: Mr. Brendan Higgins  
NBC 5 KXAS TV  
3100 McKinnon Avenue, #850  
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(w/o enclosures)